

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

---

MICHAEL S. SUBENKO,

Petitioner,

v.

THE COMMONWEALTH OF MASSACHUSETTS,  
THE BROCKTON DISTRICT ATTORNEYS  
OFFICE, and BROCKTON SUPERIOR COURT,

Respondents.

---

04-03031 P 4-24

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Civil Action No. 04-10023-GAO

**RESPONDENTS' MOTION TO DISMISS PETITION  
FOR WRIT OF HABEAS CORPUS AS TIME-BARRED**

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the respondents respectfully submit this motion to dismiss the petition for a writ of habeas corpus filed by the petitioner, Michael S. Subenko. The petition must be dismissed as time-barred under 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions. Because his conviction became final on September 25, 2002, Subenko had to file his federal habeas petition within a one-year limitations period that expired on September 25, 2003. This petition was not filed until January 5, 2004, however, more than three months after the limitations period had lapsed. Accordingly, the petition must be dismissed as time-barred.<sup>1</sup> In support of their motion, the respondents rely on the accompanying memorandum of law and exhibits.

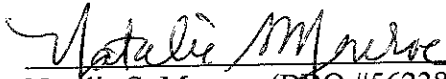
---

<sup>1</sup> The respondents' remaining defenses are not addressed here because the running of the statute of limitations mandates dismissal of the petition. In the event that this Court declines to dismiss the petition as time-barred, the respondents reserve the right, and requests the opportunity, to file an answer and assert all other applicable defenses.

**WHEREFORE**, the respondents respectfully request that the Court dismiss this habeas petition with prejudice on the grounds that it is time-barred.

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

  
Natalie S. Monroe (BBO #562383)  
Assistant Attorney General  
Criminal Bureau  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200, ext. 2833

Dated: March 31, 2004

**Certificate of Compliance with Local Rule 7.1(A)(2)**

I, Natalie S. Monroe, hereby certify that I have been unable to confer with the petitioner, who is incarcerated at the Souza-Baronowski Correctional Center and is not free to accept or make telephone calls during normal business hours. It is believed, in any event, that the petitioner would not voluntarily assent to any portion of the subject motion.

  
Natalie S. Monroe

**Certificate of Service**

I hereby certify that on March 31, 2004, I caused a copy of the above document to be served by first-class mail, postage prepaid, upon the *pro se* petitioner, Michael S. Subenko, Prisoner W65867, Souza-Baranowski Correctional Center (Cell 40-L-2), P.O. Box 8000, Shirley, Massachusetts 10464.

  
Natalie S. Monroe